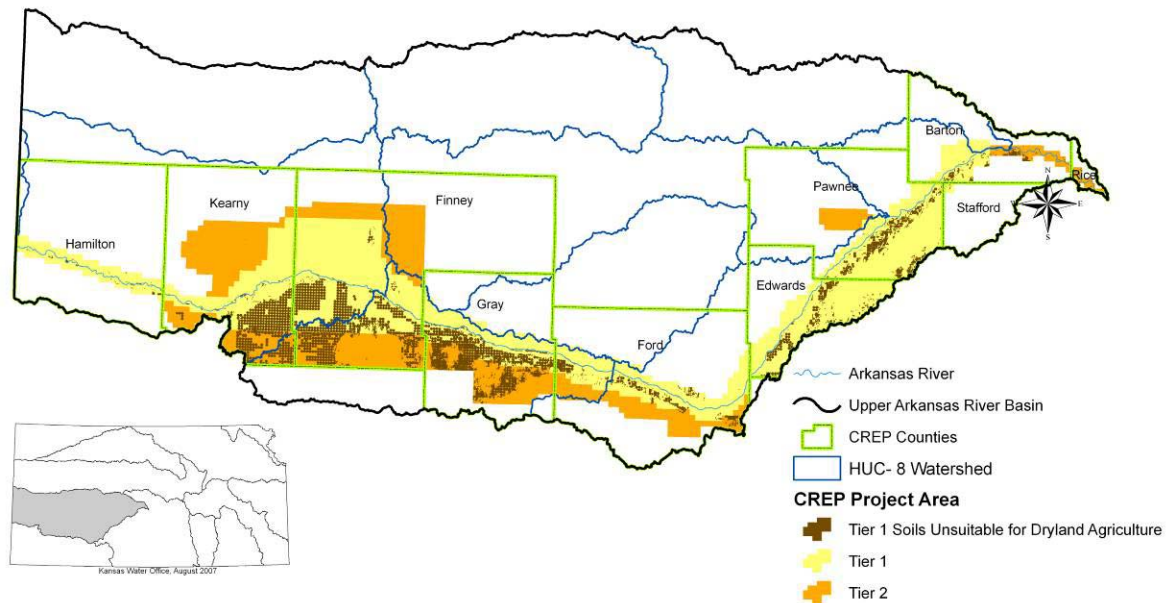


KANSAS UPPER ARKANSAS RIVER CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP)

LEGISLATIVE REPORT



January 14, 2008



www.scc.ks.gov

Table of Contents

Overview	1
History	1
Partnership	3
CREP Project Implementation Update	5
Legislative Reporting Components	7
Attachment A: Memorandum of Agreement	18
Attachment B: Maps of Acres Offered	35
Attachment C: Monitoring Wells and Average Groundwater Levels	40

For additional information, contact:
Steve Frost, CREP Coordinator
Kansas State Conservation Commission
109 SW 9th, Suite 500
Topeka, KS 66612-1299
(785) 296-3600

www.scc.ks.gov

Overview

The 2007 Kansas Legislature approved funding for a Kansas Upper Arkansas River Conservation Reserve Enhancement Program (UAR CREP). The CREP is a United States Department of Agriculture (USDA) program that creates individual rules and special conditions and rates for a geographic region or watershed. The State Conservation Commission, the Kansas Water Office and the Kansas Department of Agriculture worked with USDA's Farm Service Agency and Natural Resources Conservation Service to develop and launch the Upper Arkansas River Conservation Reserve Enhancement Program (CREP).

After receiving Legislative approval, the State of Kansas crafted and reached agreement to obtain federal funds through the USDA for the purpose of encouraging irrigators along the upper Arkansas River corridor to enroll in a Conservation Reserve Enhancement Program (CREP). This Memorandum of Agreement (MOA) achieved the signature of Governor Sebelius on November 27, 2007 and Acting Secretary, U.S. Department of Agriculture, Charles F. Conner on December 4, 2007.

This voluntary program provides incentives and cost sharing to participants that enroll their land into eligible conservation practices such as native vegetation establishment or wildlife conservation for a period of 14 to 15 years. The CREP area lies within 10 counties along the Arkansas River corridor, covering 1,571,440 acres. In the CREP area, 718,683 acres are authorized for ground water irrigation; approximately another 10,680 acres are authorized for irrigation from surface water. The state seeks to enroll up to 20,000 acres into the program under the current MOA; 17,000 acres of irrigated land, and 3,000 dryland corners from irrigated circles. Reducing irrigation demands on the stream-aquifer system will help slow the aquifer declines, mitigate the spread of saline waters into the aquifer, and help restore stream and riparian health.

History

The CREP area includes portions of ten counties (Hamilton, Kearny, Finney, Gray, Ford, Edwards, Pawnee, Stafford, Barton and Rice Counties) and two groundwater management districts (Southwest Kansas GMD3 and Big Bend GMD5) along the river corridor. The target area along the river corridor lies within the upper Arkansas River basin. The main water sources for producers along the Arkansas River corridor are the surface water diversions, the alluvial and the High Plains aquifers; the project area has hydrologic interaction with the river due to surface flow and ground water pumping, and covers 1,571,440 acres. The Arkansas River flows from headwaters in the Rocky Mountains, and has been diverted for over 100 years for irrigation in Colorado and Kansas. The river and ground water system have had several decades of well-documented flow depletions entering the state, and ground water declines in the aquifer are resulting in loss of baseflow to the river; decline in well yields, and in some locations, degradation of ground water quality.

The Arkansas River is a resource of national and state concern for both water quantity and water quality. The flow into Kansas is extensively controlled through releases from the John Martin Reservoir, managed through the Arkansas River Compact Administration. Previous reduced flows as the river entered Kansas, in violation of the compact, resulted in stream flow depletion, ground water declines, and economic damage. The river is also one of the most saline in the nation where it enters Kansas, a result of the extensive concentration of salts through irrigation use and reuse. The declining flows and deteriorated water quality threaten the viability of this important surface water source in western Kansas. Correlated with the reduced flow and increasing salinity of the river is the degradation of riparian health and wildlife habitat. Native plant communities have declined, and there has been an extensive and aggressive infestation of tamarisk and other non-native phreatophytes.

Kansas-Colorado Arkansas River Compact Update

The Kansas-Colorado Arkansas River Compact was negotiated in 1948 between the States of Kansas and Colorado with participation by the federal government. Its stated purposes are to settle existing disputes and remove causes of future controversy between the States of Colorado and Kansas concerning the waters of the Arkansas River and to equitably divide and apportion between the states of Colorado and Kansas the waters of the Arkansas River as well as the benefits arising from John Martin Reservoir.

Chief Engineer David Barfield serves as one of three Compact Commissioners along with David Brenn and Randy Hayzlett. Kevin Salter serves as Assistant Operations Secretary of the Compact Administration. Kansas Department of Agriculture staff provides technical and legal support.

Kansas filed *Kansas v. Colorado*, No. 105, Original, in 1985 to enforce the terms of the Arkansas River Compact. In 1994, Special Master Littleworth recommended that the Supreme Court determine that Colorado had violated Article IV-D of the Arkansas River Compact by means of post-compact well pumping in Colorado. On May 15, 1995, the United States Supreme Court agreed. Since 1995, the damages and remedies phase of the trial have been on-going.

The Special Master issued his Fourth Report on November 12, 2003. Oral arguments were heard on Kansas' exceptions to the Special Master's Fourth Report before the United States Supreme Court on October 4, 2004. The Court ruled against all of Kansas' exceptions and adopted the Report on December 7, 2004. The Court also remanded the case to the Special Master to resolve the final issues in the case and to prepare the Final Decree.

Since March 2005, the States, under the guidance of the Special Master, have been updating the Hydrologic-Institutional (H-I) Model through 2004 and drafting the final decree. The Decree will include the H-I Model that will be used to determine if Colorado is in compliance.

On April 29, 2005, Colorado paid Kansas more than \$34 million in damages for Colorado's compact violations during the period 1950 through 1999. On June 29, 2006, Colorado also paid Kansas more than \$1.1 million in costs. This money has been deposited in three funds created by statute that specify generally how and where the money will be spent.

At this time, the states are awaiting the recommended final decree, which will be in the Special Master's Fifth Report.

Partnerships

Project Implementation

Successfully meeting the goals and objectives of the UAR CREP will require interagency cooperation and adherence to a coordinated implementation plan. The implementation plan covers each agency's responsibility and the step-by-step process for outreach, processing applications, providing technical assistance, and monitoring success.

The UAR CREP is being implemented through continuous signup, first come, first priority, until a county reaches the CREP program maximum for enrolled acres or the federal limit on CRP acreage enrolled in one county.

Outreach

Public outreach for the UAR CREP was initiated prior to and during the preparation of the project proposal to gather information and assess public support. Many outreach meetings occurred on the UAR CREP throughout western Kansas and during the Legislative session. The implementation team developed an informational brochure on CREP for use during the awareness campaign. A coordinated approach to outreach and support will continue through implementation of the program. Much of the initial success of the UAR CREP is a result of strong marketing of the program to producers interested in the program. The initial announcement was accomplished through mailing materials, newspaper press releases, educational brochures, and local informational meetings. Each of the agencies cooperating in the program were responsible for the outreach component, but especially the KWO, SCC, GMDs #3 and 5, and the local Conservation Districts.

Technical Assistance

Technical assistance will be provided to the producers enrolled in the UAR CREP by USDA Natural Resource Conservation Service and the State Conservation Commission.

Agency and Organization Cooperation subscribed through the MOA

The **Kansas Water Office (KWO)**, the state's planning agency, provides coordination of the CREP program development. KWO will contribute to public outreach through presentations at Basin Advisory Committee (BAC) meetings and to other interested

stakeholders. KWO will work with each of the agencies identified below to prepare and provide USDA with annual CREP progress reports. The Director, KWO, administers the Water Conservation Projects Fund for projects in the Upper Arkansas River corridor that provide water conservation, efficiency gains and aquifer recharge. These projects are consistent with the water quantity, water quality and habitat improvement goals of the Upper Arkansas CREP.

The ***State Conservation Commission (SCC)*** works with the local conservation districts, organized watershed districts and state and federal agencies, to administer programs that improve water quality, reduce soil erosion, conserve water and reduce flood potential. The SCC administers the Water Transition Assistance Program for water right purchase and retirement. The SCC will utilize an existing staff position for CREP administration, to oversee the CREP in the Upper Arkansas basin.

The ***Farm Services Agency (FSA)*** is the lead USDA agency for CREP. FSA provided the first public announcement of the program signups and made broad outreach to all potentially eligible persons. FSA field office staff work with landowners and producers to determine if CREP is a program that fits for their acreages and circumstances. They initiate the contract with interested parties, provide estimates of payments, and work to determine suitable conservation practices. Final approval of contracts come from the FSA County Committees. FSA has no responsibility for the water right terminations, but coordinates with SCC and the Division of Water Resources as to the sufficiency of the voluntary dismissals.

The ***Kansas Department of Agriculture, Division of Water Resources (DWR)*** provides verification of water rights in good standing, administration of retired water rights, issuance of term permits, well administrations, and monitoring of aquifer levels and streamflows. The Division of Water Resources will do any legal separation of water rights necessary. This agency assists with the Arkansas River Compact Administration for compact compliance. The Chief Engineer reviews project applications for water conservation and efficiency in the Upper Arkansas River basin for funding through the Water Conservation Projects Fund, project efforts that are in addition to the CREP.

The ***Kansas Department of Health and Environment (KDHE)*** will monitor surface water quality in the Arkansas River and tributaries.

The ***Kansas Geological Survey (KGS)*** will provide annual monitoring of aquifer levels. They also provide technical studies on the salinity fate and transport, aquifer characterization, and ground water modeling.

Kansas Department of Wildlife and Parks (KDWP) will provide wildlife population monitoring. KDWP conducts wildlife and habitat surveys through several programs including stream monitoring and assessment and shorebird surveys. KDWP conducts statewide stream surveys to document the current range and distribution of stream species. Since 2002, KDWP has coordinated a volunteer effort to survey shorebirds at wetlands throughout Kansas. Portions of these ongoing survey efforts as well as additional wildlife population monitoring activities can serve as in-kind contribution towards the CREP project. KDWP also will monitor visitation rates at Cheyenne Bottoms Wildlife Area.

Groundwater Management Districts (GMD) 5 and 3 will monitor water levels, collect water quality samples, recommend water management actions to the Chief Engineer, review and advise on water conservation projects in the Upper Arkansas River, and promote water conservation. GMD5 also provides payments for purchase and retirement of water rights, and payments for multi-year non-use of the irrigation water right.

Kansas State University will provide public outreach support to the cooperating state and local agencies involved with this CREP submission and implementation. Extension agents with expertise in programmatic areas important to the program will be available to answer questions posed by users of the program. Cooperative Extension has established outreach networks to transfer important information and results to clientele and end users of program information.

Cooperative Extension also has the capacity to analyze and interpret economic impacts as the CREP program is implemented. These impacts include both positive and negative impacts in the basin communities. Positive impacts will result from changes in the environment as less water is diverted for irrigation and remains in the stream flow. Negative impacts result from decreased economic activity as land is removed from irrigated agricultural production, whether temporary or permanent.

The **Natural Resource Conservation Service (NRCS)** provides technical assistance on CREP contracts. As needed, NRCS employees visit the offered acres and work with the producer to determine if the proposed conservation practices are appropriate and suit their needs. They may later visit to confirm successful implementation of the practices. NRCS personnel develop the Conservation Practice of Operation (CPO) for the producer.

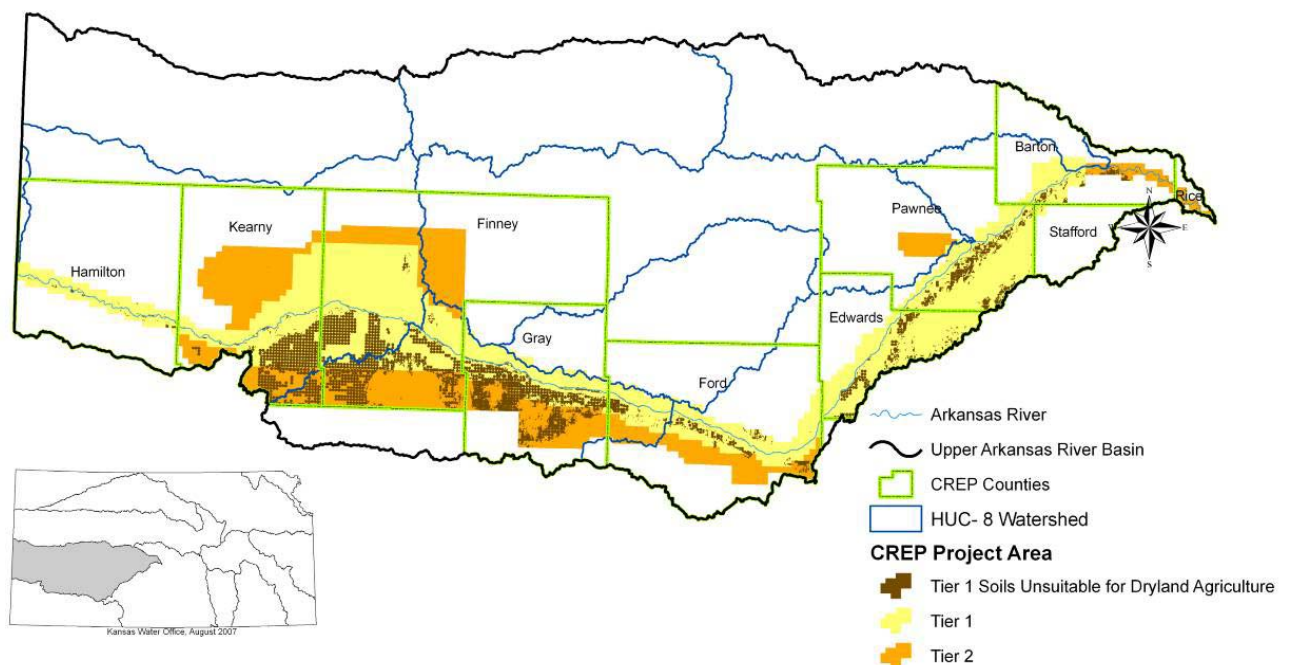
CREP Project Implementation Update

The CREP program will protect water quality and extend the usable life of the of the Ogallala Aquifer by retiring water rights on up to 20,000 acres of land in Barton, Edwards, Finney, Ford, Gray, Kearny, Pawnee, Rice and Stafford counties. Hamilton County is eligible for the program, but currently is at the maximum level of acres that can be enrolled in the program. The Kansas Legislature approved the program size up to 40,000 acres; however, the Memorandum of Agreement was reduced to the above level because of the limitation of two acres of currently enrolled CRP expiring for every new acre to be enrolled in CREP.

The Kansas Farm Service Agency began accepting applications to enroll land in the CREP program on December 20, 2007. Application was made in the county where the land is located, and all applications will be considered on a first-come, first-served basis. Farmers who enroll irrigated or non-irrigated cropland in the program and permanently retire their water rights will receive rental payments for 14 to 15 years at rates between \$100 and \$125 per acre per year. Cost-share funds also will be available for seeding, well plugging and tamarisk control on enrolled land. Enrolled land can also be leased for hunting.

The goals of the UAR CREP are to enroll up to 20,000 acres of eligible cropland under the program within the designated area to significantly reduce the amount of irrigation water consumptive use and improve water quality through the reduction of agricultural chemicals and sediment entering waters of the State from agricultural lands, and impede the spread of poor quality river water into the fresh alluvial and High Plains aquifers. The reduction of irrigation water use and of non-point source contaminants, through permanent termination of water rights appurtenant to the land enrolled in CREP and the establishment of permanent vegetative cover and other conservation practices, will slow the aquifer declines and loss of baseflow, enhance associated wildlife habitat, both terrestrial and aquatic, and conserve energy.

The objectives that detail the implementation plans for the CREP are found under the Legislative Reporting Components section of this report.



Legislative Reporting Components

According to House Bill Number 2368, § 152(g) of the Session Laws of the Regular Session of the 2007 Kansas Legislature, re-engrossed, April 13, 2007, the State Conservation Commission shall submit a CREP report to the Senate committee on Natural Resources and the House committee on Agriculture and Natural Resources at the beginning of the 2008 regular session of the Legislature, which shall contain a description of program activities and shall include:

- (i) ***The total water rights, measured in acre-feet, retired in CREP during fiscal year 2007 and fiscal year 2008 to date,***

As of January 8, 2008, for the acres offered into the CREP program, approximately 27,488 acre-feet of authorized quantity may be permanently retired from irrigation.

CREP County	Estimated Authorized Quantity (Acre-Feet) of Water Permanently Retired on Offered Acres	2006 Irrigation Reported Water Use (Acre-Feet) for the offered acres
Barton		
Edwards		
Finney	3,787	2,057
Ford		
Gray	9,971	5,279
Hamilton		
Kearny	13,322	8,661
Pawnee	407	229
Rice		
Stafford		
Total	27,488	16,226

- (ii) ***the acreage enrolled in CREP during fiscal year 2007 and in fiscal year 2008 to date,***

As of January 8, 2008, 13,294 acres have been offered into the CREP program. (See maps of county offered acres in Attachment B). Between December 20 and December 31, 2007, 12,926 acres were offered into the CREP program. An additional 368 acres were offered between January 1 and 8, 2008.

- (iii) ***the dollar amounts received and expended for CREP during fiscal year 2007 and in fiscal year 2008 to date,***

As of January 8, 2008, for the acres that have been offered into the CREP program, if all offers were entered into contracts, the federal rental and maintenance payments would be approximately \$1,525,180. Contracts range for

14 to 15 years, for estimated total payments ranging from \$21,352,520 to \$22,877,700. One-time payments will also be made for offered acres that are approved for the CREP program. Approximately \$576,857 may be provided as Federal cost-share, approximately \$819,352 may be provided by the State of Kansas for an upfront payment, and approximately \$29,500 may be provided by Pheasants Forever for grass seeding cost-share.

Payment	For offers made between December 20 and 31, 2007	For offers made between January 1 and 8, 2008
Federal Annual Per Acre Rental Rate (14-15 year contracts)	\$1,482,831	\$42,349
Federal Cost-Share	\$562,372	\$14,485
State Upfront Payment	\$796,520	\$22,832
Pheasants Forever Seeding Cost-Share	\$28,500	\$1,000
Total	\$2,870,223	\$80,666

(iv) ***the economic impact of the CREP,***

In 2006, researchers from Kansas State University released a report titled “Regional Economic Impacts of Implementation of the Conservation Reserve Enhancement Program in the Kansas Upper Arkansas River Basin”, with a companion report, “Potential Distributional Impacts of the Proposed Kansas CREP Program”. The studies estimated the potential economic impact of a 100,000 acre CREP along the Upper Arkansas River corridor. It assumed 85,000 acres of irrigate acres and 15,000 acres dryland corners, and that following a 15 year CREP contract, the acreage returned to a combination of dryland farming and pasture land production. The irrigation water rights are permanently retired. The study used an annual irrigated rental rate and maintenance payment of \$78.00/acre. The study estimated a 100,000-acre enrollment in CREP to have an annual reduction on the economy of 8.7 million for the duration of the contracts, or about 3 percent of the total value of agricultural production in the CREP counties.

Part of the analysis required a prediction of the producers most likely to enroll acres into the program, and the type of acres, crops, and the associated water use that would be involved. The study characterized the CREP counties by points of diversion within the CREP program area, the irrigated acreage by county and year, acre-feet of water usage by county and year, the crop mix and change in crop mix over time, and the hydrological characteristics of each CREP County. The study predicted that the most likely producers to enroll into CREP would be those that either attributed a low value to their water right or had limited water availability. These producers were identified by a downward trend in irrigated acreage; historically low average water used per acre, sporadic use of their water right, and/or switches to crops with lower water demands.

There are a few significant differences from the final program that was approved for implementation and the assumptions in the economic analysis. The Upper Arkansas River CREP program implemented with USDA, with signup beginning December 20, 2007, is for a 20,000 acres CREP, not 100,000 acres. Additionally, the irrigated rental rates are higher than the assumed payments in the study, and range from \$100/acre to \$125/acre depending on HUC location and irrigation system, plus an annual \$4/acre maintenance payment. Wheat, corn, and other crop prices have risen significantly since the 2006 study. Costs for energy prices have also increased.

To date (January 8, 2008) 13,294 acres have been offered for enrollment into CREP. However, in two counties, Gray and Kearny, there were over 1,000 acres offered above the state imposed restriction of a 25% of CREP program enrollment in any one county. For a 20,000 acre CREP, that makes a 5,000 acre enrollment cap. These acres were accepted on a pending basis, if room should become available. For this preliminary evaluation, these acres were included.

Based on the preliminary data of the offered acres for enrollment, a KSU researcher looked at the characteristics of the offered water rights and acres and compared it to the original study predictions. It is also important to recognize that the acres associated as legal places of use with a water right may be larger than the final number of acres accepted into the CREP program by USDA.

The following are the preliminary characteristics of the acres offered (but not yet enrolled).

1. A high percentage (84%) of the acres is on soils that are unsuitable for dryland farming, (soils with an erodibility index of 134 or more).
2. The acres offered are predominantly in areas with greater depth to water, higher water use density, and/or more rapid water level declines than typifies the eligible CREP acres in total.
3. The crop types of the offered acres were fairly close to the original economic impact study predictions, with one significant difference on alfalfa.
4. A higher percentage (15-20%) of acres offered has been in alfalfa compared to the general eligible CREP acres crop history (10%).
5. In general, the water rights to be terminated with the offered CREP acres have used a higher percentage (71%) of the total water right allocation than the total CREP county water rights (58%).
6. The water rights associated with the offered acres tend to be more junior in the water right priority system.

Implications for economic impact

In general, the poorest producing, least profitable land, with the poorest water wells that still meet eligibility requirements are the ones being offered for enrollment. Also, the more junior water rights are the ones getting offered for termination, perhaps reflecting owners' knowledge that in time of water shortages, wells with junior rights would be turned off before the senior water rights. The two main surprises are the relatively higher percentage of acres in alfalfa being offered, and the water rights to be terminated have a history of using a higher percentage than the region in general. That the water rights to be terminated with enrolled CREP acres are using a higher percentage of the allocated water right for the general region means that the program is getting a "wetter" water right retired.

(v) *the change in groundwater levels in the CREP area during fiscal year 2007 and fiscal year 2008 to date,*

No assessment of this objective has been made as of January 2008. The impact of enrollment of acres into the Upper Arkansas River CREP on ground water conditions cannot be made until after water rights have actually been terminated. Following is a summary of the anticipated methodology for this objective. Average groundwater levels and a map of the location of monitoring wells is provided in Attachment C.

Water levels have been monitored at least annually at numerous locations in the CREP counties. The map below includes the locations of historical water level measurements in the area. Groundwater Management District #5 obtains water level measurements from 25 wells in the CREP area. Annual measurements are collected from 14 of these wells and quarterly measurements of 11 wells are planned to continue. Data collected from each of these measurements will be used to assess the progress towards meeting this objective.

Water levels within the boundaries of the CREP area, particularly in the areas where contracts are approved, would be measured over time. Depending on the level of change, the monitored changes could also be compared with predicted changes based on computer modeled scenarios.

(vi) *the annual amount of water usage in the CREP area during fiscal year 2007 and fiscal year 2008 to date,*

Annual water use reports have been received and verified by the Kansas Department of Agriculture, Division of Water Resources for the 2006 reporting year. Reported irrigation water use and the number of irrigated acres within the CREP Project Area for 2006 are shown in the table below.

County	2006 Reported Irrigated Acres within the CREP Project Area	2006 Irrigation Reported Water Use (Acre-Feet) within the CREP Project Area
Barton	16,314	16,872
Edwards	38,835	40,872
Finney	209,757	284,785
Ford	43,158	51,739
Gray	86,507	112,794
Hamilton	11,180	20,045
Kearny	104,196	165,742
Pawnee	51,525	49,602
Rice	526	429
Stafford	628	677
Total	562,626	743,556

(vii) an assessment of meeting each of the program objectives identified in the agreement with the farm service agency, and

1. Enroll a maximum of 20,000 acres into CREP in the project priority area (17,000 irrigated acres, 3,000 from dryland pivot corners as part of whole field enrollment), with a goal of up to 18,600 acres put into native grass.

As of January 8, 2008, 13,294 acres have been offered for enrollment into the CREP program; 12,834 irrigated acres and 460 dryland acres. All the 13,294 acres have been offered to be seeded into native grass.

2. Reduce the application of ground water for irrigation in the targeted area by 29,750 acre-feet, annually, with the enrollment of 17,000 irrigated acres.

If all 13,294 acre offered for enrollment were accepted into the CREP program, the retirement of the associated water rights would conserve 27,488 acre-feet based on the water right appropriations for authorized quantity. A summary of authorized quantities and reported use on the offered acres is provided above in reporting requirement (i).

3. Increase the frequency of meeting minimum desirable streamflows in the Arkansas River at the USGS gaging stations at Great Bend and Kinsley by 2020 from 71% and 52%, respectively, as measured in 1996-2004.

No assessment of this objective has been made as of January 2008. The impact of enrollment of acres into the Upper Arkansas River CREP on minimum desirable streamflow cannot be made until after water rights have actually been terminated. Following is a summary of the anticipated methodology for this objective.

There are three components to streamflow: frequency, magnitude and duration. Each of these components will be reviewed at the Great Bend and Kinsley MDS gage. The daily flow from 1960 to 2004 will be summarized into annual data. The summarization parameters include:

1. The percent of time the MDS was not met (frequency of excursion).
2. The volume of flow less than MDS as calculated by the difference between MDS and reported flow (magnitude of excursion).
3. The maximum length in consecutive days that MDS was not met (duration of excursion).

The frequency, magnitude and duration for which MDS was not met will be compared for the pre-CREP years (1960 –2006) to the post-MDS years (2007-2008). A nonparametric test, the Wilcoxon rank-sum, will be used to determine if a statistically discernable difference existed between the pre and post-MDS period.

The same comparison will be made using the pre and post-CREP period and the average annual Palmer Drought Severity Index (PDSI) for the region in which the MDS gage was located. This will create an index for the antecedent moisture conditions that will be a primary factor in determining each period's flow condition. One would expect that in those regions where the PDSI had become significantly greater (wetter), one should see a concomitant improvement in the magnitude, frequency or duration of the MDS condition.

Finally, the trend for the annual summarizations of the three components of flow will be assessed. This assessment will be used to determine whether there is a discernable trend in the annual frequency, magnitude or duration of minimum desirable stream flows through time (1960-2005).

4. Reduce stream flow transit losses due to inefficiencies in the delivery of the water by improving the channel and canal delivery system.

No assessment of this objective has been made as of January 2008. The improvements to the stream flow delivery system have not yet been made.

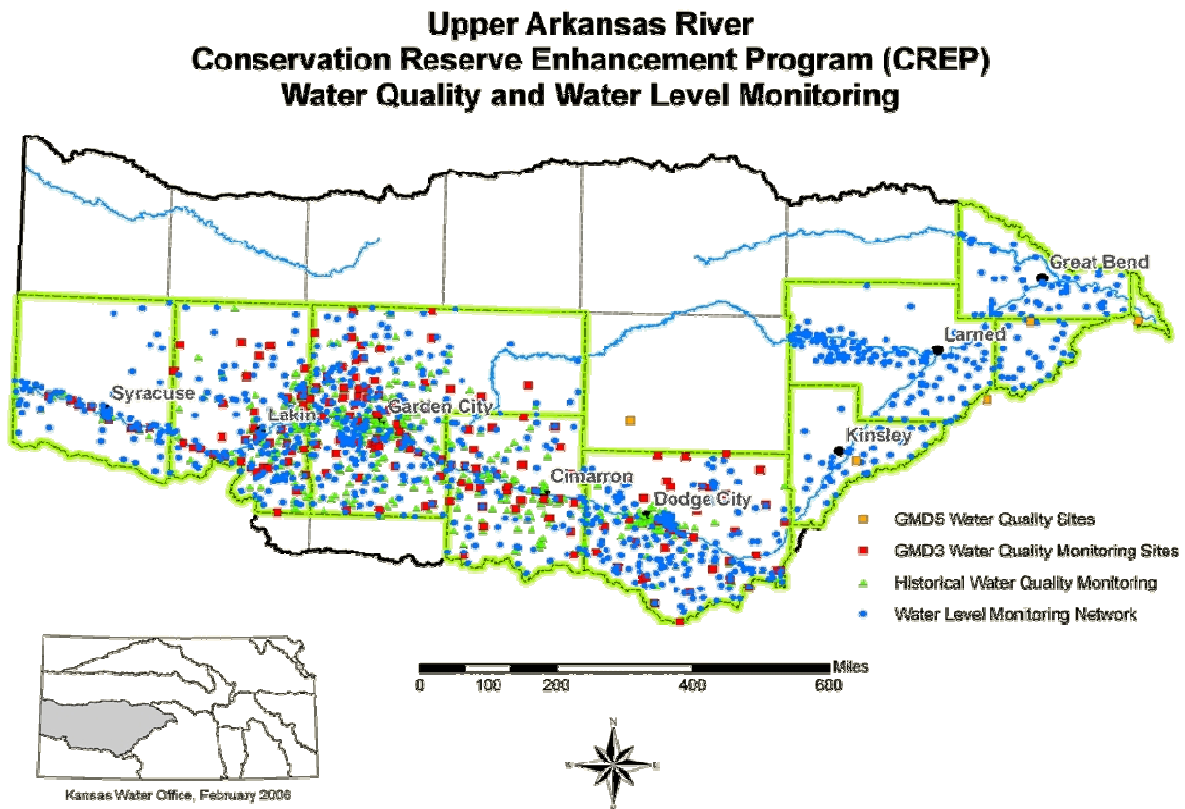
5. Reduce the rate of ground water declines in the alluvial aquifer and the hydraulically connected High Plains aquifer in the CREP area by 2020 from those measured during the winter months for the past five years (2001 – 2005) and ten years (1996-2005).

No assessment of this objective has been made as of January 2008. The impact of enrollment of acres into the Upper Arkansas River CREP on ground water conditions cannot be made until after water rights have actually been terminated. Following is a summary of the anticipated methodology for this objective.

Water levels have been monitored at least annually at numerous locations in the CREP counties. The map below includes the locations of historical water level measurements in the area. Groundwater Management District #5 obtains water

level measurements from 25 wells in the CREP area. Annual measurements are collected from 14 of these wells and quarterly measurements of 11 wells are planned to continue. Data collected from each of these measurements will be used to assess the progress towards meeting this objective.

Water levels within the boundaries of the CREP area, particularly in the areas where contracts are approved, will be measured over time. Depending on the level of change, the monitored changes could also be compared with predicted changes based on computer modeled scenarios.



Ground water quality and water level well locations within the CREP counties.

6. Reduce the outward migration of river salinity within the High Plains aquifer by 2020 from the currently projected extent based on 1990's ground water conditions in the Arkansas River valley.

As of January 8, 2008, approximately 13,294 acres have been offered for enrollment into the CREP program. Some of the offered acres are close to the stream, and most are south of the river. While no formal assessment of this objective can be made at this time, the state's comprehensive water quality monitoring network, as described below, will be used to determine progress in meeting this objective.

Instream water quality and ground water quality have been recorded historically through monitoring programs at the state and local level. The Kansas

Department of Health and Environment (KDHE) have a long-standing network of monitoring stations along the Arkansas River from Coolidge to Great Bend. These stations are the foundation for the TMDL work in the Upper Arkansas Basin. Two years of intensive bacteria sampling have been conducted with over eight sessions of sampling 5 times within 30 days along these stations on the Arkansas River, in accord with K.S.A. 82a-2001, et seq.

The existing stations will be used to assess future post-TMDL conditions, over the next 15 years. It is not expected that CREP will have an impact on the overall TDS levels in the river, however improvement is expected in the reduction of the advance of TDS or sulfate into the fresh water aquifers laterally from the river.

Ground water sampling has occurred at 183 sites within the basin in the Hamilton, Kearny, Finney, Gray and Ford counties in GMD3 by the GMD. Since 1988, 492 analyses have been obtained from this area. GMD3 monitoring is scheduled to continue, with these analyses available to evaluate CREP progress when appropriate.

Continuing east along the river, ground water quality monitoring in the area by GMD5 has been conducted for specific projects from 12 wells. This information can provide a basis for comparison in the future.

This data will provide water quality data from before CREP and the continuing monitoring program will enable data analysis to occur documenting impacts of the program. These along with the ground water monitoring for various state initiatives provide a baseline for post-CREP comparison. Stream and ground water samples will be analyzed to determine mineral content at a frequency appropriate to determine representative water quality at least on an annual basis. Sulfate, selenium and total dissolved solids will be quantified at a minimum. Ground water samples will be obtained for analysis and result comparison from wells with an analysis history. Wells with previous data will be monitored from both the alluvial and High Plains aquifers.

7. Reduce the bacterial, nutrient and pesticide levels in the Arkansas River in Edwards and Pawnee Counties by 2020 from the 1990 – 2000 levels.

Bacteria impairments under the new state definition are in the middle reaches of the basin. Intense sampling for bacteria after 2015, concentrating on the Kinsley area, is planned. Additional data will be available through the monitoring network as described in Objective #6. However, an assessment of this objective will not be made at this time.

As of January 8, 2008, 241 acres have been offered into the CREP program in Pawnee County. No acres have been offered in Edwards County.

8. Increase aquifer recharge and wildlife habitat by enrolling 400 acres of playa lakes and soils, and other suitable locations for shallow water development.

As of January 8, 2008, no acres have been formally offered for the CP9 Shallow Water Areas practice. However, approximately 22 acres of playa soils occur on acres offered into the CREP program.

9. Reduce agricultural use of highly erodible soils with a goal of enrolling 7,000 acres that are unsuitable for dryland farming.

As of January 8, 2008, approximately 11,155 acres of soils unsuitable for dryland farming, 84% of the total offered acres, have been offered for enrollment into the CREP program. Once the offered acres are entered into a formal contract, it is highly probable this objective will be met.

10. Reduce the amount of soil lost to erosion by approximately 80,000 tons per year on all acres enrolled in CREP.

Soil erosion in the Upper Arkansas River Basin occurs primarily due to wind erosion. Water erosion is also a factor in soil erosion in the basin, but to a lesser extent. In comparison, wind erosion can reach 4 tons/acre whereas water erosion would total 0.3 ton/acre on the same soil types with the same cropping patterns and management practices. Factors that affect wind erosion include residue cover, field width, crop rotation intensity, and tillage operations (USDA 2006).

With offers of 13,294 acres for enrollment in the CREP program as of January 8, 2008, the amount of soil lost to erosion will be reduced by approximately 53,176 tons per year. On all highly erodible soils, as determined by a soil I factor of 134 or greater, limited irrigation for up to two years will be a condition on the water right termination, to help establish a vegetative cover. Prior to final contract approval, a conservation plan of operation will be prepared, and limited irrigation may be recommended.

11. Protect the ecological and recreational viability of the Cheyenne Bottoms with improved Arkansas River stream flow, as measured by an increase in the average, annual bird count at the Bottoms in 2015-2023 as recorded from 1996-2004, and with increased human visitation rates in 2015-2023 as recorded from 1996-2004.

No assessment of this objective has been made as of January 2008. The impact of enrollment of acres into the Upper Arkansas River CREP on the ecological and recreational viability of Cheyenne Bottoms will not be discernable until water rights have actually been terminated. Monitoring of the average annual bird count and human visitation rates will continue.

12. Reduce energy consumption from an average of 59,850 kW-hr to less than 5,000 kW-hr per pivot for the first two years on pivots enrolled in the CREP. In subsequent years, energy consumption will be reduced to zero, as the pivots eligible for limited irrigation will be removed from the enrolled parcel. Total energy savings for the term of the CREP contracts will approach 8 million kW-hr.

Kansas State University Research and Extension staff provided a rough estimate of energy consumption for a 125-acre center pivot in counties along the Upper Arkansas River. An average of 59,850 kW-hr was derived from their estimates.

In the first two years of the program, offers made for acres that occur in soils unsuitable for dryland agriculture will have the opportunity to irrigate minimally to ensure establishment of grass cover. Therefore, a small amount of energy consumption will still be realized in the first years of the program.

Irrigated Acres Offered as of January 8, 2008	12,834
Approximate Number of Center Pivots Retired	102.6
Average Energy Consumption per Pivot	59,850 kW
Total Energy Savings per year	6,140,610 kW

(viii) *such other information as the state conservation commission shall specify.*

The table below identifies the approximate number of water rights offered for permanent retirement through the Upper Arkansas River CREP program.

CREP County	Approximate Number of Water Rights Offered for Permanent Retirement between December 20 and 31, 2007	Approximate Number of Water Rights Offered for Permanent Retirement between January 1 and 8, 2008
Barton		
Edwards		
Finney	13	
Ford		
Gray	22	1
Hamilton		
Kearny	42	1
Pawnee	2	
Rice		
Stafford		
Total	79	2

The following table identifies the number of contracts and acres by county represented by the acres offered for enrollment in 2007 and 2008.

CREP County	Contracts Offered prior to December 31, 2007	Acres Offered prior to December 31, 2007		Contracts Offered after January 1, 2008	Acres Offered after January 1, 2008		Total Acres Offered since Program Initiation
Barton							
Edwards							
Finney	10	1,975					1,975
Ford							
Gray	27	5,138		1	242		5,380
Hamilton							
Kearny	31	5,572		1	126		5,698
Pawnee	2	241					241
Rice							
Stafford							
Total	70	12,926		2	368		13,294

ATTACHMENT A:

**AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION AND THE STATE OF KANSAS CONCERNING THE
IMPLEMENTATION OF THE UPPER ARKANSAS RIVER CONSERVATION RESERVE
ENHANCEMENT PROGRAM**

AGREEMENT

BETWEEN

**THE UNITED STATES DEPARTMENT OF AGRICULTURE
COMMODITY CREDIT CORPORATION**

AND

**THE STATE OF KANSAS
CONCERNING THE IMPLEMENTATION OF
THE UPPER ARKANSAS RIVER
CONSERVATION RESERVE ENHANCEMENT PROGRAM**

This Memorandum of Agreement (Agreement) is entered into between the United States Department of Agriculture (USDA), the Commodity Credit Corporation (CCC), and the State of Kansas (Kansas) to implement a Conservation Reserve Enhancement Program (CREP).

I. PURPOSE

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC and Kansas, certain irrigated and non-irrigated cropland in the targeted watersheds to be enrolled in the Kansas Upper Arkansas River (UAR) CREP project area. (See Appendix 1 for general information.)

II. GENERAL PROVISIONS

The goals of the UAR CREP are to enroll up to 20,000 acres of eligible cropland under the program within the project area to conserve irrigation water and to improve water quality. The UAR CREP is intended to reduce agricultural chemicals and sediment from entering waters of the State from agricultural lands that contribute to poor water quality in rivers and alluvial and High Plains aquifers. The reduction of irrigation water use and of non-point source contaminants, through permanent termination of water rights appurtenant to the land enrolled in CREP and the establishment of permanent vegetative cover and other conservation practices, are intended to slow the aquifer water level decline and loss of baseflow to the river, enhance associated wildlife habitat, both terrestrial and aquatic, conserve energy and reduce erosion.

The specific project goals are to achieve, to the extent practicable when fully implemented, the following objectives:

- A. Enroll a maximum of 20,000 acres into CREP in the project area (up to 17,000 irrigated cropland acres and up to 3,000 cropland acres of dryland center pivot corners and other associated dryland areas, as defined in section IV. H. (2)), part of whole field enrollment , with a goal of enrolling approximately 18,600 acres into native grasses and legumes.
- B. Reduce the application of ground water for irrigation in the targeted area by 29,750 acre-feet, annually, with the enrollment of 17,000 irrigated acres.
- C. Increase the frequency of meeting minimum desirable streamflows in the Arkansas River at the U.S. Geological Survey (USGS) gauging station at Great Bend, Kansas, from seventy-one percent (71%) to seventy-four percent (74%) as measured from levels in 1996-2004, by 2020, and at Kinsley, Kansas, from fifty-two percent (52%) to fifty-four percent (54%), as measured from levels in 1996-2004 by 2020.
- D. Reduce stream flow transit losses by eight percent (8%) due to inefficiencies in the delivery of the water by improving the channel and canal delivery system.
- E. Reduce the rate of ground water declines by fifteen percent (15%) to twenty percent (20%) in the alluvial aquifer and the hydraulically connected High Plains aquifer in the CREP area by 2030 compared to modeled projected water level declines with continued pumping from 2005-2030.
- F. Reduce the outward migration of river salinity within the High Plains aquifer by 2020 from the currently projected levels based on 1990's ground water conditions in the Arkansas River valley.
- G. Improve water quality in the Arkansas River in Finney, Gray, Ford, Edwards, Pawnee and Rice Counties by 2020, from the 1990 – 2000 levels, which are listed under Kansas' Total Maximum Daily Loads for bacteria and nutrients, by:
 - (1) Reducing the bacteria concentrations in the Arkansas River below Kansas Water Quality Standards for primary contact recreation (260 CFU per 100ml; and
 - (2) Reducing phosphorus concentrations in the Arkansas River above Great Bend by fifty percent (50%).
- H. Increase aquifer recharge and wildlife habitat by enrolling 400 acres of otherwise eligible playa lakes and soils, and other suitable locations for shallow water development through the use of CRP conservation practices CP-4D, CP-9, CP23 and/ or CP23A as suitable to the specific land.

- I. Reduce agricultural use of highly erodible soils with a goal of enrolling approximately 7,000 acres that are unsuitable for dryland farming (as defined in section VI. A).
- J. Reduce the amount of annual soil lost to erosion by approximately 80,000 tons per year.
- K. Protect the ecological and recreational viability of the Cheyenne Bottoms State Wildlife Area, in Barton County, Kansas, with improved Arkansas River stream flow, as measured by an increase of the average annual bird count at the Bottoms in 2015-2023 as compared to those recorded from 1996-2004, and with increased human visitation rates in years 2015-2023 as compared to those recorded from 1996-2004.
- L. Reduce energy consumption from an average of 59,850 kW-hr to less than 5,000 kW-hr per center pivot for the first two years on pivots enrolled in the CREP. In subsequent years, energy consumption will be reduced to zero, as the pivots eligible for limited irrigation will be removed from the enrolled parcel. Total energy savings for the term of the CREP contracts will approach 8 million kW-hr.

III. AUTHORITY

The CCC has the authority under provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 *et seq.*), and the regulations at 7 CFR Part 1410 to perform all its activities contemplated by this Agreement.

The State of Kansas has authority to enter into and perform its activities contemplated by this agreement under Article 1, § 3, and Article 11, § 9, of the Kansas Constitution, the conservation districts law (K.S.A. 2-1901 *et seq.*), the Kansas Water Appropriation Act (K.S.A. 82a-701 *et seq.*), and House Bill Number 2368, § 152(g) of the Session Laws of the Regular Session of the 2007 Kansas Legislature, Re-engrossed, April 13, 2007; Enrolled and presented to the Governor, April 23, 2007; Approved and signed into law by the Governor of the State of Kansas, April 24, 2007.

This Agreement is not intended to, and does not, supersede any rules or regulations, which have been or may be promulgated by USDA/CCC, the State of Kansas, or any other governmental entity participating in the CREP. This Agreement is intended to aid in the administration of the CRP. Other authorities may also apply.

IV. PROGRAM ELEMENTS

USDA, CCC, and Kansas agree that:

- A. In determining CCC's share of the cost of the UAR CREP Agreement's establishment and operation, CCC shall use the appropriate CRP regulations and the FSA CRP National Directives. All CRP contracts executed under this Agreement shall contain conservation plans consistent with applicable CRP statutes, regulations, and specifications, in accordance with USDA policies for similar enrollments and this Agreement.
- B. This CREP consists of a continuous sign-up CRP component, and a Kansas Enhancement Program comprised of 4 elements:
 - (1) State Up-Front Payments (SUP)
 - (2) State Well Plugging Cost-Share Payments
 - (3) State Tamarisk Control Payments
 - (4) State Wetland Bonus Payments
- C. The CRP contracts for acres enrolled in the UAR CREP will be for a period of 14 to 15 years.
- D. Eligible producers in the UAR CREP project area may also continue to offer other eligible acreage for enrollment during any applicable CRP general and continuous enrollment periods.
- E. CRP contracts executed under this Agreement will be administered in accordance with, and subject to, the CRP regulations at 7 CFR Part 1410, and the provisions of this Agreement. In the event of a conflict, the CRP regulations take precedence.
- F. No lands may be enrolled under this program until the FSA's CREP Program Manager approves a detailed Kansas FSA supplement to the Farm Service Agency Handbook 2-CRP which will provide a thorough description of this program and applicable practices.

G. Eligible practices for the UAR CREP are as follows:

Practice	Estimated Enrollment Goal	Description
CP2	18,600 acres	Establishment of Permanent Native Grasses and Legumes
CP4D	400 acres	Permanent Wildlife Habitat, Non-easement
CP9	200 acres	Shallow Water Areas for Wildlife
CP10	400 acres	Vegetative Cover Grass Already Established
CP21	100 acres	Filter Strips
CP22	100 acres	Riparian Buffer
CP23/CP23A	200 acres	Wetland Restoration; (Flood-plain & Nonflood-plain)

H. To be eligible for enrollment in the UAR CREP, cropland must meet the cropland eligibility requirements as set forth in 7 CFR § 1410.6 and FSA CRP National Directives, and any other applicable rules, and must also meet the following requirements:

- (1) At least fifty one (51) percent of the eligible cropland must be located within the UAR CREP project area, (see Appendix 1), as determined by the FSA Deputy Administrator.
- (2) For non-irrigated (dryland) cropland to be eligible for enrollment under this program, the land must meet FSA CRP crop history and all other eligibility requirements according to FSA CRP National directives, and must be either devoted to dryland center pivot corners or other dryland areas within or adjacent to eligible irrigated fields to be enrolled under this CREP project.

Note: Other dryland areas within or adjacent to irrigated fields are defined as: cropped lands with authorized irrigation water rights that lie within a predominately irrigated field, but due to the irrigation system layout, are not irrigated, as determined by the FSA Deputy Administrator in consultation with the State CREP Coordinator.

The State CREP Coordinator is to be assigned by the Executive Director, State Conservation Commission and the Director, Kansas Water Office. Enrollment is restricted to 3,000 acres or less of non-irrigated center pivot corners and other dryland areas.

- (3) For irrigated cropland to be eligible for enrollment under this program, as determined by the FSA Deputy Administrator, in consultation with the State CREP Coordinator, the following shall apply:
 - a. The cropland must have been planted and irrigated at the rate of not less than $\frac{1}{2}$ acre-foot per acre per year for 4 out of the 6 years, 1996-2001, and
 - b. The cropland must be physically and legally capable of being planted and irrigated in a normal manner when offered for enrollment as determined by FSA.
- (4) Additional irrigated cropland requirements for land to be eligible for enrollment under this program are as follows:
 - a. Prior to termination of the water right appurtenant to and associated with the offered acreage to be enrolled, the water right must be in good standing, as defined in section VI. J. (1), with the State of Kansas, as determined by the Kansas Department of Agriculture, Division of Water Resources;
 - b. The water right used on the offered acreage shall not have exceeded the maximum annual quantity authorized in the years 2001 through 2005 and shall not have been the subject of enforcement sanctions by the Kansas Department of Agriculture, Division of Water Resources prior to offer submission;
 - c. The water right holder has submitted to the Kansas Department of Agriculture, Division of Water Resources, the required water-use report each of the most recent 10 years prior to enrollment;

- d. At least fifty percent (50%) of the maximum annual quantity authorized to be diverted under the water right appropriation under the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq*, must have been reported used in any three years from 2001 – 2005; and
 - e. The water right is not already enrolled in the Kansas State Water Bank, pursuant to the Kansas Water Banking Act, K.S.A. 82a-761 *et seq* or in use for other mitigation.
- (5) A water rights termination form (i.e., Form KCREP-WRT-01 "Voluntary Waiver of Hearing & Water Right Owner's Statement and Request to Terminate a Water Right for Acres to be enrolled in the Upper Arkansas River Conservation Reserve Enhancement Program") for the water right appurtenant to land to be enrolled in the CREP herein established must first be completed and submitted by the water right owner(s) to the Kansas Department of Agriculture, Division of Water Resources, for all irrigated cropland to be offered for enrollment for a CRP contract. This form, (KCREP-WRT-01), must be properly executed by the water right owner(s) and received by the Kansas Department of Agriculture, Division of Water Resources, prior to any CRP contract approval. If a water right authorizes irrigation of more than the offered acreage, the water right must be legally divided into separate water rights and the portion of the water right that is appurtenant to the irrigated acreage to be enrolled in CREP must be terminated after the CRP contract is approved. If the water right owner cannot or refuses to sign the water right termination agreement, the State CREP Coordinator will promptly notify FSA, and FSA will reject the CREP offer.
- (6) The offered acreage must be an entire manageable unit to be eligible for this CREP, so that one or more water right(s) can be permanently terminated, as determined by the State CREP Coordinator. A manageable unit is a partial field, whole field, or combination of whole and partial fields, identified on FSA records, which have one or more water rights suitable for complete termination and enrollment in the UAR CREP program as determined by the State CREP Coordinator.

- I. Once a CRP contract is approved by FSA, the Kansas Department of Agriculture, Division of Water Resources, will execute the water right termination which will have the same effective start date as the CRP contract. The water right termination may be conditioned to allow limited irrigation for up to two years to assist in establishing vegetative cover if the offered acres have soils that are predominantly unsuitable for dryland farming as defined according to section VI. A., and such limited irrigation is outlined in the CRP conservation plan.
- J. The water right terminations required under this CREP Agreement do not impact the landowners' ability to use water on the enrolled acreage for domestic use purposes. Such domestic uses are uses of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of two acres in area for the growing of gardens, orchards and lawns as defined in the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.*
- K. No more than 5,000 acres can be enrolled under this Agreement in any one county in Kansas. Fully eligible offers will be accepted for CRP contracts on a "first-come, first-serve" basis.

V. FEDERAL COMMITMENTS

USDA and CCC agree to:

- A. Provide cost-share payments to all participants for up to fifty (50) percent of the eligible reimbursable costs incurred for the establishment of approved conservation practices according to FSA CRP National Directives. The total of all cost-sharing payments, from any source, shall not exceed one hundred percent (100%) percent of a participant's out-of-pocket expenses.
- B. Make annual rental payments based on posted irrigated rental rates for eligible enrolled acreage for which the Kansas Department of Agriculture's Department of Water Resources has indicated that an owner-signed water right termination request has been secured and executed by Kansas. Under the terms of this Agreement, the annual UAR CREP irrigated rental rates will be set forth and approved in a supplement to the FSA Handbook 2-CRP. The maximum annual per-acre payment rate for irrigated cropland will be equal to the sum of:
 - (1) The most current weighted-average, posted relevant irrigated cropland rental rate per acre for the enrolled land; and

- (2) A maintenance incentive payment per acre in an amount according to the FSA CRP National Directives.
- C. Make annual rental payments based on posted dryland cropland rental rates for eligible enrolled cropland acreage from the dryland center-pivot corners or other dryland areas that are part of an enrolled irrigated field. The per-acre, maximum payment rate for dryland cropland will be equal to the sum of:
 - (1) Posted relevant dryland CRP soil rental rate based on the 3 predominant soils on the eligible dryland acreage offered according to FSA National CRP Directives, i.e. the base soil rental rates; and
 - (2) A maintenance incentive payment per acre in an amount according to the FSA CRP National Directives.
- D. Make a one-time Signing Incentive Payment (SIP) for practices CP21 and CP22, in accordance with FSA CRP National Directives. The SIP is considered a rental payment for payment limitation purposes.
- E. Make a one-time Practice Incentive Payment (PIP) for practices CP9, CP21, and CP22 in accordance with FSA CRP National Directives. The PIP is considered a rental payment for payment limitation purposes.
- F. Make a one-time incentive payment equal to twenty-five (25) percent of the cost of restoring the hydrology for practices CP-23 and CP-23A, in accordance with FSA CRP National Directives. The hydrology restoration incentive payment is considered a rental payment for payment limitation purposes.
- G. Administer CRP contracts for land enrolled in the UAR CREP, consistent with the provisions of the FSA CRP National Directives.
- H. Develop conservation plans in accordance with FSA CRP National Directives.
- I. Conduct compliance reviews according to FSA CRP National Directives.
- J. Provide information to potential participants concerning the UAR CREP and technical assistance for implementing the CREP program in general in accordance with applicable statutes and laws regulating such actions.

- K. Permit successors-in-interest to existing contracts to participate under the UAR CREP in the same manner as allowed for under other CRP contract(s) as provided in FSA CRP National Directives.
- L. Approve CREP offers in accordance with National FSA CRP Directives and this Agreement.

VI. STATE COMMITMENTS

Kansas agrees to contribute not less than twenty (20) percent of the overall annual program cost through a combination of payments to program participants, new funding for the CREP project, and certain in-kind services, as agreed to by USDA, including:

- A. Provide a one-time State Upfront Payment (SUP) of sixty-two dollars (\$62) per irrigated acre located in Tier 1 and thirty-five dollars (\$35) per irrigated acre located in Tier 2, based on the dominant tier applicable to the CRP contract area. To qualify for Tier 1 the offered area must, as determined by the State CREP Coordinator in consultation with FSA, either (1), have a predominant soil type determined unsuitable for dryland farming due to susceptibility to very high levels of wind erosion, (to be considered susceptible to very high levels of wind erosion a soil must have a Wind Erosion Equation I Factor of 134 or greater), or (2), be predominantly located in an other Tier 1 area as shown in Appendix 1, All other offers not determined located in Tier 1 shall be assigned to Tier 2.

SUP payment shares shall be divided amongst all participants consistent with the shares on the related CRP contract.

The total of all SUP payments shall not exceed two million dollars (\$2,000,000) over the life of the CREP project.

- B. Pay a one-time State Wetland Bonus of three hundred fifty dollars (\$350) per acre to UAR CREP participants, to be divided amongst all participants consistent with the shares on the related CRP contract, that establish CP-9, a shallow water development, when it can also serve as an aquifer recharge and is located within an area eligible to receive Water Conservation Projects Funds, as determined by the State CREP Coordinator.
- C. Pay up to one thousand dollars (\$1,000) State cost-share assistance for optional plugging and proper abandonment of a well at the request of the UAR CREP participant for wells where the water right has been terminated under the UAR CREP enrollment process, as determined by the State CREP Coordinator

- D. Provide State cost-share assistance, at levels determined appropriate by the State CREP Coordinator, to eligible UAR CREP participants for control of tamarisk and other invasive, non-native phreatophytes in the UAR CREP project area.
- E. Provide staffing and support for annual monitoring and evaluation of changes in ground water levels, river flow, water quality and other changes related to water conservation and natural resource benefits of CREP implementation, including wildlife benefits.
- F. Provide funding for a full-time (FTE 1.0) State CREP Coordinator to facilitate and oversee program implementation, coordination, promotional activities, technical assistance, and monitoring and evaluation.
- G. Establish an Enhancement Program Steering Committee, which will include representatives from the Kansas Water Office, Kansas Department of Agriculture Division of Water Resources, Kansas' State Conservation Commission, Kansas Department of Wildlife and Parks, and Kansas Department of Health and Environment, and as agreed to by USDA, the Farm Service Agency and the Natural Resources Conservation Service. In addition, the Kansas Water Office will consult with the Kansas Water Authority and the Upper Arkansas River Basin Advisory Committee as citizen representatives. This group will provide recommendations to Kansas and USDA on UAR CREP policies, implementation and operations.
- H. Seek producers who are willing to offer eligible and appropriate land for enrollment in the UAR CREP.
- I. Work to ensure coordination with other agricultural conservation programs of State and federal agencies and non-government CREP partners.
- J. Review each CREP offer to:
 - (1) Verify the water right appurtenant to the land applied for enrollment in the UAR CREP is an active water right (as outlined in section IV. H. (4) a. b. c. and d.), and is in good standing under the Kansas Water Appropriation Act, K.S.A. 82a-701 *et seq.*, review for appropriate action on the water right termination form (Form KCREP-WRT-01; and notify the FSA office when the water right termination has been executed by an order of the Chief Engineer, Kansas Department of Agriculture, Division of Water Resources. A water right in good standing is one that does not have a question of abandonment

- (2) Ensure that if multiple water rights are found to be appurtenant to and associated with the land included in the UAR CREP offer, the water right termination request is modified to reflect the determination of the water right(s) to be terminated on lands enrolled under the terms of this Agreement.
 - (3) Verify the water right is not already enrolled in the Kansas State Water Bank, pursuant to the Kansas Water Banking Act, K.S.A. 82a-761 *et seq* or in use for other mitigation and if the water right termination is denied for that or any other reason(s), notify the applicable FSA county office.
 - (4) Determine if the offered acres are served by both a ground water right and from a canal company or irrigation association with a surface water source, and, if so, verify that the canal company or irrigation association has endorsed and/or approved the Shareholder Agreement (Form KCREP-SA-03) which agrees that no surface water will be delivered or accepted for irrigation purposes on the tracts of land enrolled into the CREP during the period in which the CREP contract is effective. The ground water right(s) on the offered acres must be in good standing, and be voluntarily permanently dismissed through the water right termination request (Form KCREP-WRT-01).
- K. Within 90 days after the end of each Federal fiscal year, the Kansas State Conservation Commission (SCC) shall provide a report to FSA summarizing the status of enrollments under this CREP and progress on fulfilling the goals listed in section II and other commitments of the program. The annual report to FSA shall include level of program participation, water right terminations and water savings, the results of the annual monitoring program, a summary of non-Federal CREP program expenditures, success stories, and recommendations to improve the program. In the event that Kansas has not obligated 20 percent of the overall costs for the UAR CREP program, Kansas may be required by CCC to fulfill its obligation within 90 days, or provide some other mutually agreed-upon remedy.
- L. Secure a properly executed water right termination form (Form KCREP-WRT-01) from the water right owner(s) for all irrigated land to be enrolled under a CRP contract executed under this Agreement.
- M. Take all reasonable steps to enforce the requirements of all water right terminations for acreage enrolled in the UAR CREP and promptly inform CCC if such agreements are not being followed for the duration of the CRP contract.

- N. Facilitate the provision of promotion and outreach initiatives to provide technical information from local conservation districts in promoting the UAR CREP.
- O. Implement a broad, continuous outreach and promotion campaign to provide public information and education regarding the UAR CREP.
- P. Temporarily release participants from any contractual restriction on crop production during the CRP contract period if such release is determined necessary by the Secretary of Agriculture in order to address a national emergency.

VII. MISCELLANEOUS PROVISIONS

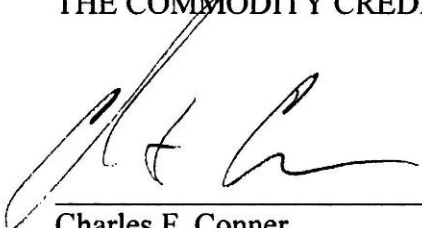
- A. All CRP contracts executed under this Agreement shall be subject to all limitations set forth in the regulations at 7 CFR part 1410 including, but not limited to, such matters as economic use, transferability, violations, and contract modifications. Agreements between participants and the applicable agencies of Kansas may impose additional conditions not in conflict with those applicable under the regulations at 7 CFR part 1410, but only as approved by USDA.
- B. Neither Kansas, nor the USDA, shall assign or transfer any rights or obligations under this Agreement without prior written approval of the other party.
- C. Kansas and the USDA agree that, to the extent possible under applicable law, each party will be solely responsible for its own acts, omissions, and the results thereof, and shall not be responsible for the results thereof caused by the acts or omissions of the other party.
- D. Kansas and the USDA agree to enter into a data sharing agreement to facilitate the evaluation of UAR CREP offers and implementation of signed agreements, and agree to keep the data confidential in a manner that is consistent with State and Federal law. Data sharing will also be in accordance with procedures, restrictions, and exemptions established under the federal Freedom of Information Act, federal privacy laws and other applicable laws, with the State of Kansas to facilitate Kansas's review of offers and monitoring and evaluation efforts.
- E. USDA may enter into CREP contracts for fully eligible persons and land provided that the CREP project enrollment limit has not been reached, and that such actions are otherwise authorized by law.

- F. All financial commitments of the USDA/CCC and Kansas are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 days and any necessary modifications will be made to this Agreement.
- G. This Agreement may be terminated by either party at any time after written notice. Such termination of this Agreement will not alter responsibilities regarding existing contractual obligations established under the UAR CREP and the Kansas incentive program between participants and USDA or CCC, or between participants and Kansas.
- H. The Deputy Administrator for Farm Programs, Farm Service Agency or the Deputy Administrator's designee or successor, is delegated authority to carry out this Agreement and, with the Governor of Kansas, or the Governor's designee or successor, may further amend this Agreement consistent with the provisions of the 1985 Act, as amended, and the regulations at 7 CFR part 1410. The provisions of this Agreement may only be modified by written agreement between the parties.
- I. USDA, CCC, and FSA shall not be party to, or responsible for, any water rights contracts, water use enforcement activity, water savings compliance or monitoring efforts, or any other Kansas or local water laws, regulations, rules or ordinances. All water rights issues related to this Agreement are matters for the State of Kansas; however, CCC reserves the right to deny or terminate any CRP contracts entered into pursuant to the terms of this agreement if eligibility criteria related to water rights are not met.
- J. If any clause of this agreement shall be found by a competent court of the federal or state jurisdiction to be void, that clause shall be stricken from the agreement and the rest and remainder of the agreement shall remain in effect or, if both parties shall agree, the entire agreement may be voided, upon mutual consent of the parties.

- K. The U.S. Department of Agriculture prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact the USDA, Office of Communications at 202-720-5881 (voice) or 202-720-7808 (TDD.) To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC, 20250, or call 202-720-7327 (voice) or 202-720-1127 (TDD). USDA is an equal employment opportunity employer.

In witness whereof, the parties here have set their hands as of the dates indicated herein below.

FOR THE U.S. DEPARTMENT OF AGRICULTURE AND
THE COMMODITY CREDIT CORPORATION:



Charles F. Conner
Acting Secretary, U.S. Department of Agriculture

12/4/07

Date

FOR THE STATE OF KANSAS:

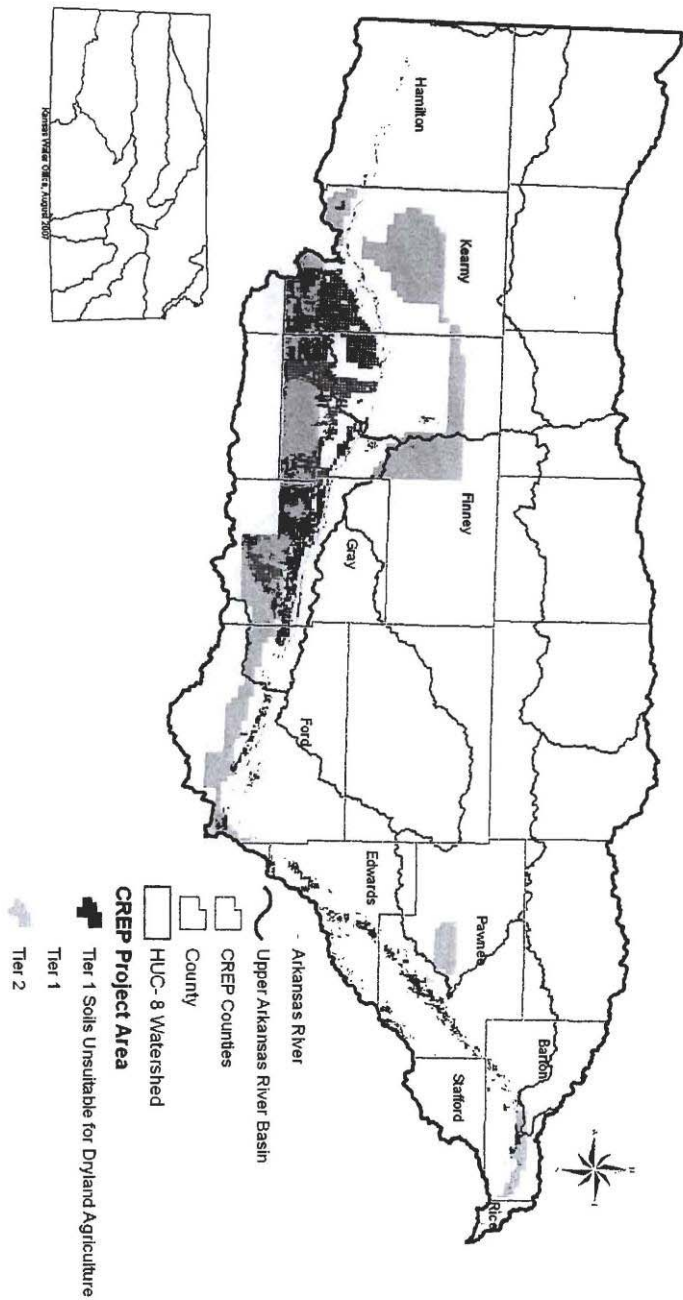


Honorable Kathleen Sebelius
Governor of the State of Kansas

11/27/07

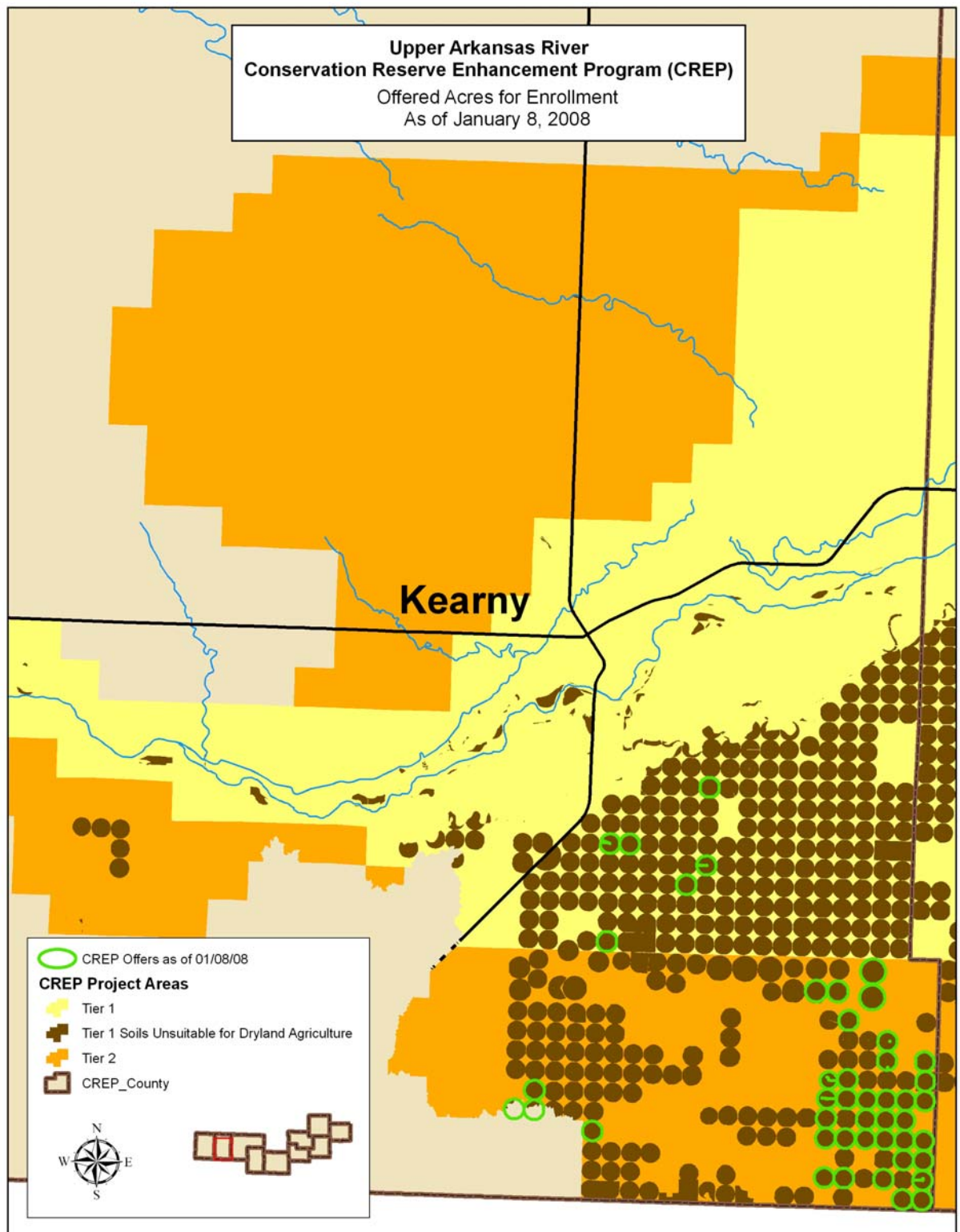
Date

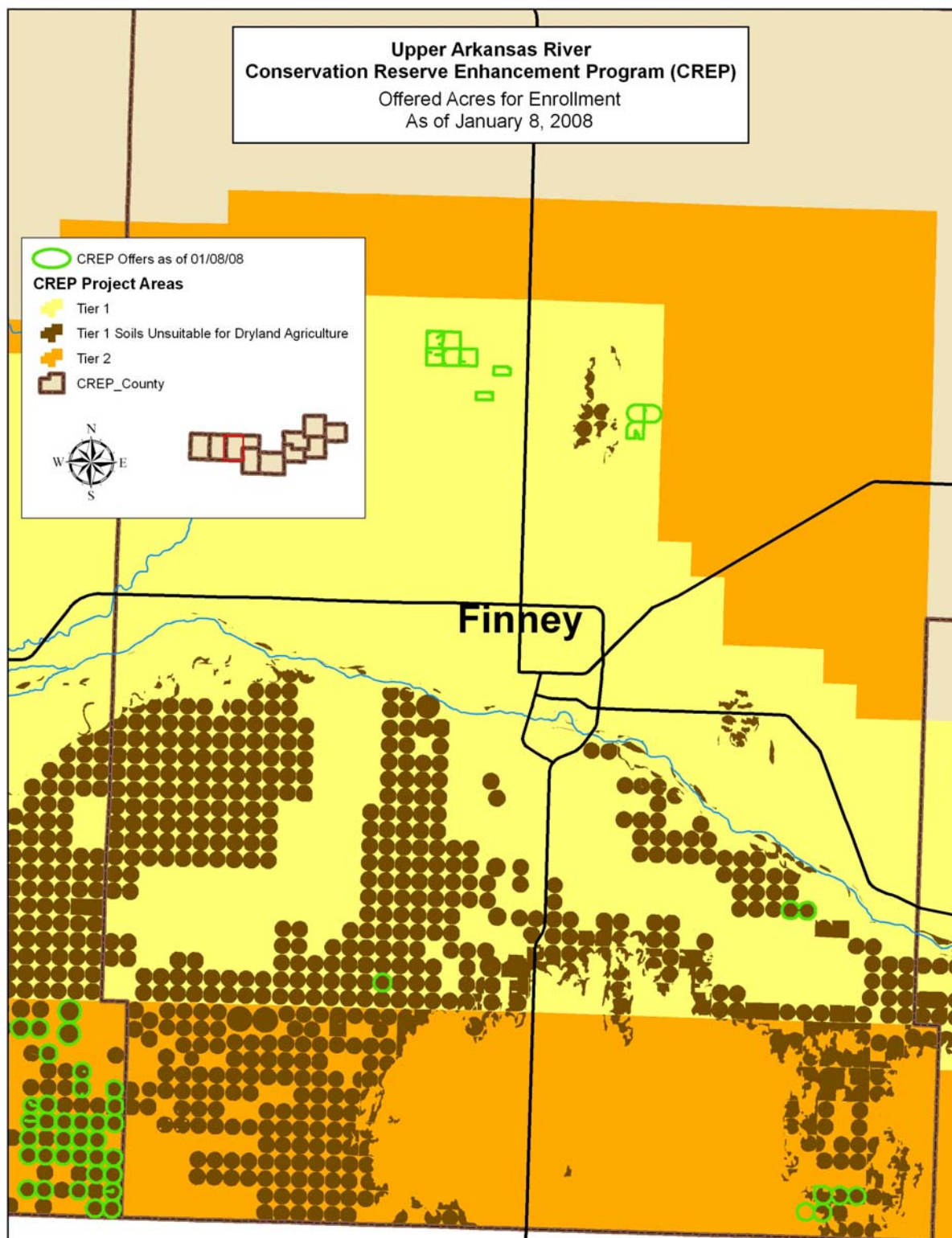
Upper Arkansas River Conservation Reserve Enhancement Program (CREP)

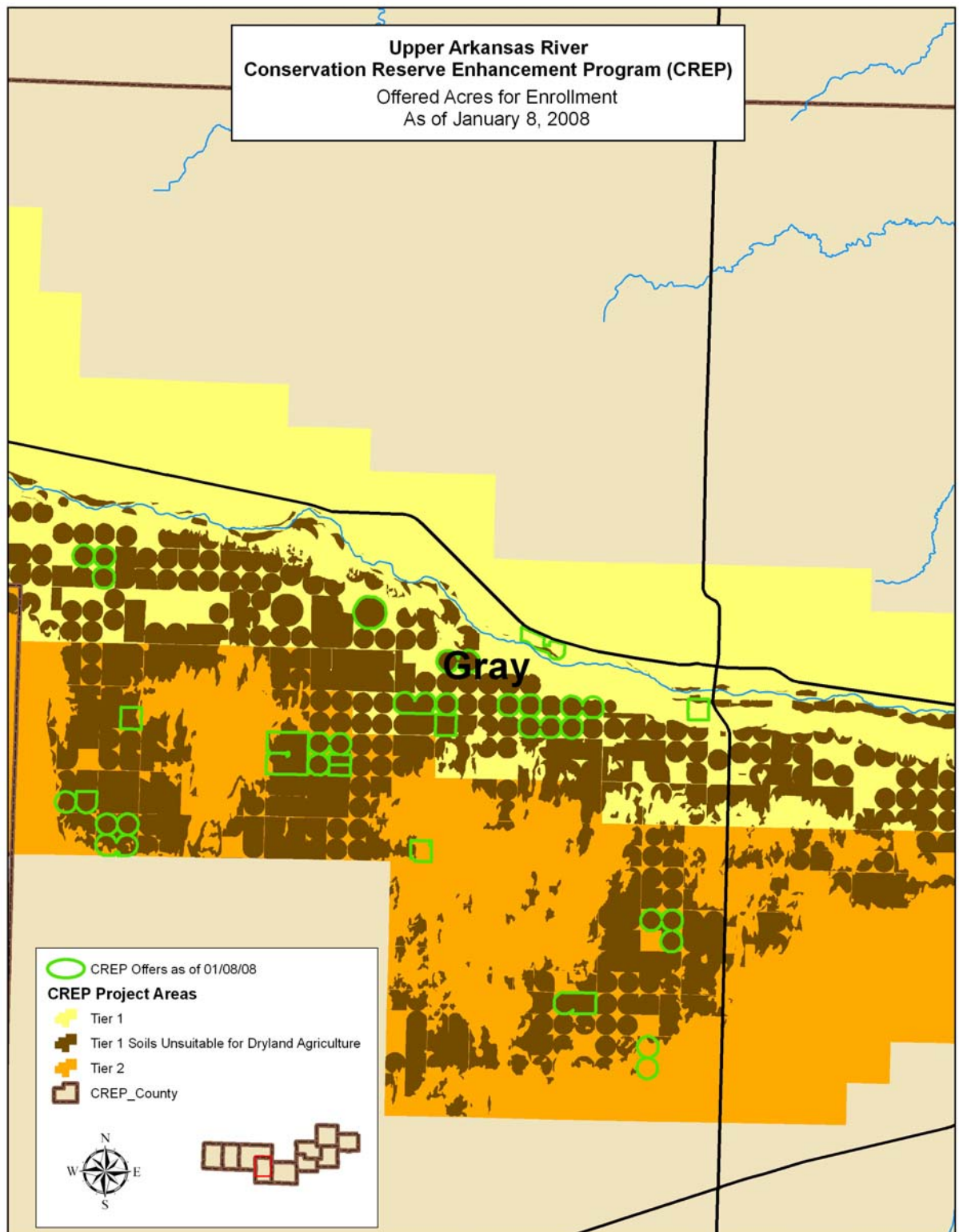


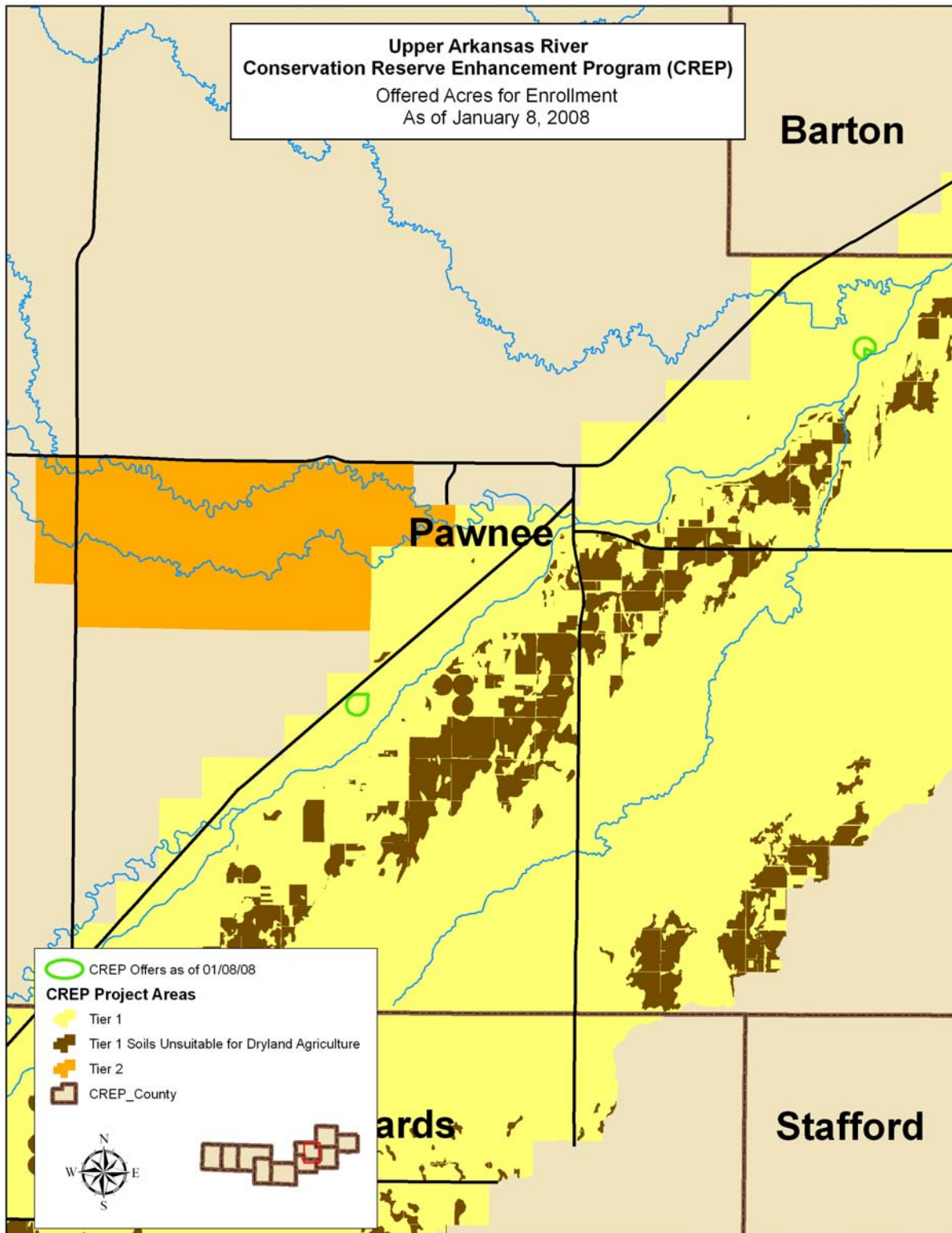
ATTACHMENT B:

**MAPS OF ACRES OFFERED FOR ENROLLMENT IN THE UPPER ARKANSAS RIVER
CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP) BY COUNTY AS OF
JANUARY 8, 2008**





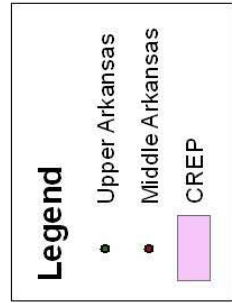
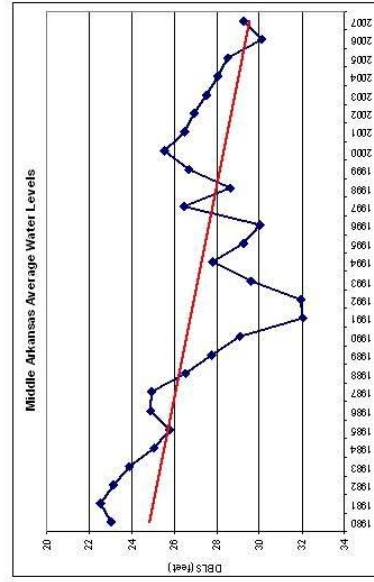
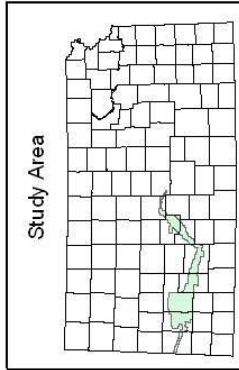
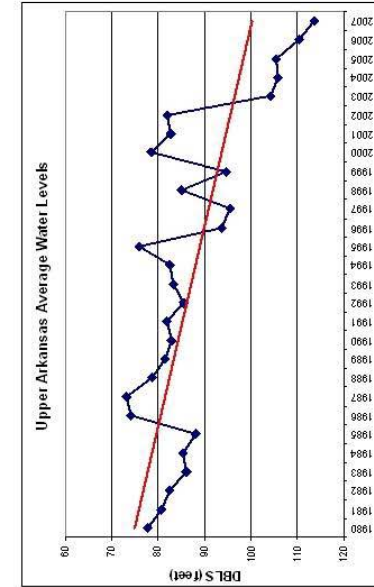
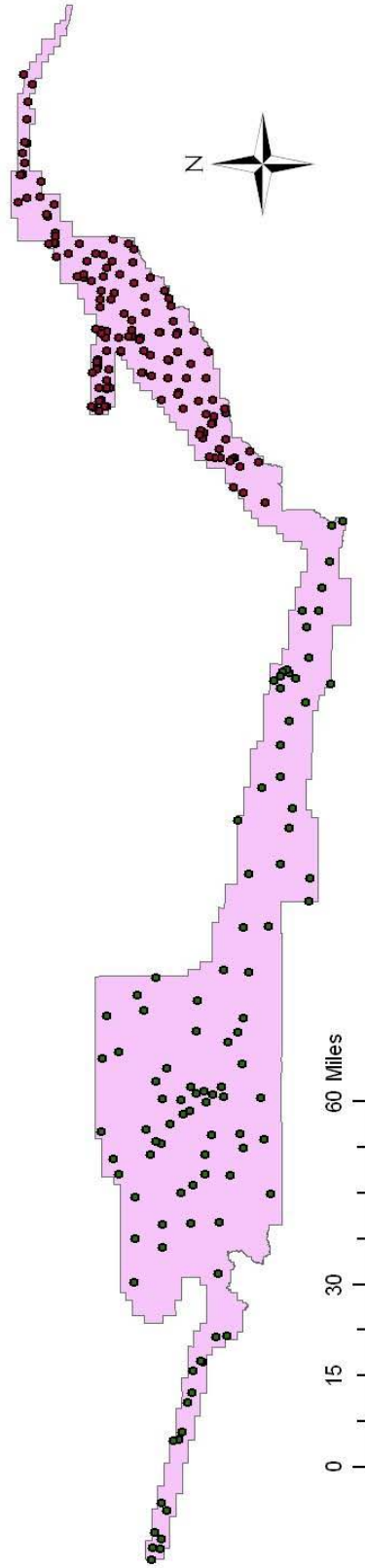




ATTACHMENT C:

MONITORING WELLS AND AVERAGE GROUNDWATER LEVELS

Monitoring Wells and Average Groundwater Levels Upper and Middle Arkansas CREP Area 1980 - 2007



January 12, 2008